

THE EFFECTIVE DATE OF THIS ORDINANCE IS June 22, 2007

ORDINANCE NO. 07-21-461

AN ORDINANCE TO AMEND AND REVISE CERTAIN PROVISIONS OF THE ZONING ORDINANCE AND ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO) OF FREDERICK COUNTY, MARYLAND, CODIFIED IN CHAPTER 1-19 AND CHAPTER 1-20 OF THE FREDERICK COUNTY CODE RESPECTIVELY, 2004

RECITALS

WHEREAS, the number of age-restricted or "senior housing" communities throughout Maryland and Frederick County is growing, due in large part to aging baby boomers and longer life expectancies, and

WHEREAS, the currently proposed age-restricted or senior housing projects in Frederick County would, if approved, provide for approximately 5,600 age-restricted housing units over the next 5-15 years, and

WHEREAS, age-restricted or senior housing is currently exempt from schools testing under the §1-20-7 of Frederick County's Adequate Public Facilities Ordinance (APFO), raising concerns that developers may be using this exemption mainly to circumvent the APFO requirements, and

WHEREAS, on February 20, 2007, the Board of County Commissioners of Frederick County, Maryland ("BOCC") passed Ordinance No. 07-04-444, which adopted additional requirements for the APFO exemption from school testing for age-restricted or senior housing projects, and

WHEREAS, for Planned Use Developments (PUDs) and Mixed Use Developments (MXDs), all or part of which are proposed to be developed as age-restricted or senior housing, the BOCC has proposed this Ordinance in order to evaluate the need and conditions for this type of housing at an earlier stage in the development process.

The Board of County Commissioners of Frederick County, Maryland ("BOCC") held a duly advertised public hearing on proposed revisions and amendments to the Frederick County Zoning Ordinance and APFO Ordinance on June 12, 2007, at which time the public had a reasonable opportunity to comment on the proposed revisions and amendments.

Pursuant to the provisions of §§1-19-60 through 1-19-64 of the Zoning Ordinance and §1-20-23 of the Adequate Public Facilities Ordinance, the BOCC has received public comments and recommendations from the Frederick County Planning Commission. The BOCC hereby deems the amendments to the Zoning Ordinance and the Adequate Public Facilities Ordinance, as such amendments are set forth in this Ordinance, to be in the best interest of the citizens of Frederick County.

Additions are CAPITALIZED and in **BOLD**; deletions are in [brackets] or ~~stricken through~~.

NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that Chapter 1-19 of the Frederick County Code be amended as follows:

A. Section 1-19-4 (DEFINITIONS) is hereby amended by adding the following definitions:

ADAPTIVE REUSE PROJECT. REHABILITATION OR RENOVATION OF EXISTING OBSOLESCEMENT OR HISTORIC STRUCTURE(S) FROM THEIR ORIGINAL OR MOST RECENT USE TO A NEW USE.

AGE-RESTRICTED COMMUNITY. A DEVELOPMENT OR PORTION THEREOF WHICH HAS BEEN DESIGNATED AS AN AGE-RESTRICTED COMMUNITY IN ACCORDANCE WITH SECTION 1-19-321(E)(7) OR SECTION 1-19-324(E)(1)(k) OF THIS CHAPTER.

B. Section 1-19-321 (PLANNED UNIT DEVELOPMENT (PUD)) is hereby amended by adding a new subsection (E)(7) as follows:

(7) IF ANY DEVELOPMENT OR PORTION THEREOF REQUESTS DESIGNATION AS AN AGE-RESTRICTED COMMUNITY FOR THE PURPOSE OF BEING EXEMPT FROM THE ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO) SCHOOLS TEST UNDER SECTION 1-20-7(E), THIS REQUEST MUST BE MADE AS PART OF THE APPLICANT'S PHASE I (REZONING) APPLICATION, INDICATING THE NUMBER AND LOCATION OF THE PROPOSED AGE-RESTRICTED DWELLING UNITS.

(a) THE PLANNING COMMISSION AND THE BOCC, IN THEIR RESPECTIVE REVIEWS OF THE PROPOSED DEVELOPMENT, SHALL CONSIDER THE FOLLOWING CRITERIA TO DETERMINE WHETHER THE PROJECT OR PORTION THEREOF MAY BE APPROVED FOR DESIGNATION AS AN AGE RESTRICTED COMMUNITY:

- (1) ACTIVE AND PASSIVE RECREATIONAL AMENITIES
- (2) AVAILABILITY, SUITABILITY AND PROXIMITY OF THE DEVELOPMENT TO PLANNED SUPPORT SERVICES
- (3) THE AMOUNT OF EXISTING AND APPROVED AGE-RESTRICTED DEVELOPMENT IN THE COUNTY AND IN PROXIMITY TO THE PROPOSED DEVELOPMENT

(b) AN ADAPTIVE REUSE PROJECT IS NOT REQUIRED TO BE DESIGNATED AT PHASE I AS AN AGE-RESTRICTED COMMUNITY IN ORDER TO APPLY FOR THE EXEMPTION FROM THE APFO SCHOOLS TEST UNDER § 1-20-7(E).

C. Section 1-19-324 (MIXED-USE DEVELOPMENT (MXD)), is hereby amended by adding a new subsection (E)(1)(k) as follows:

(k) IF ANY DEVELOPMENT OR PORTION THEREOF REQUESTS DESIGNATION AS AN AGE-RESTRICTED COMMUNITY FOR THE PURPOSE OF BEING EXEMPT FROM THE ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO) SCHOOLS TEST UNDER SECTION 1-20-7(E), THIS REQUEST MUST BE MADE AS PART OF THE

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APPLICANT'S PHASE I (REZONING) APPLICATION, INDICATING THE NUMBER AND LOCATION OF THE PROPOSED AGE-RESTRICTED DWELLING UNITS.

1. THE PLANNING COMMISSION AND THE BOCC, IN THEIR RESPECTIVE REVIEWS OF THE PROPOSED DEVELOPMENT, SHALL CONSIDER THE FOLLOWING CRITERIA TO DETERMINE WHETHER THE PROJECT OR PORTION THEREOF MAY BE APPROVED FOR DESIGNATION AS AN AGE RESTRICTED COMMUNITY:

- a. ACTIVE AND PASSIVE RECREATIONAL AMENITIES**
- b. AVAILABILITY, SUITABILITY AND PROXIMITY OF THE DEVELOPMENT TO PLANNED SUPPORT SERVICES**
- c. THE AMOUNT OF EXISTING AND APPROVED AGE-RESTRICTED DEVELOPMENT IN THE COUNTY AND IN PROXIMITY TO THE PROPOSED DEVELOPMENT**

2. AN ADAPTIVE REUSE PROJECT IS NOT REQUIRED TO BE DESIGNATED AT PHASE I AS AN AGE-RESTRICTED COMMUNITY IN ORDER TO APPLY FOR THE EXEMPTION FROM THE APFO SCHOOLS TEST UNDER § 1-20-7(E).

AND NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that Chapter 1-20 of the Frederick County Code be amended as follows:

A. The following definitions are hereby added to Section §1-20-5 (DEFINITIONS):

ADAPTIVE REUSE PROJECT. REHABILITATION OR RENOVATION OF EXISTING OBSOLESCEMENT OR HISTORIC STRUCTURE(S) FROM THEIR ORIGINAL OR MOST RECENT USE TO A NEW USE.

AGE-RESTRICTED COMMUNITY. A DEVELOPMENT OR PORTION THEREOF WHICH HAS BEEN DESIGNATED AS AN AGE-RESTRICTED COMMUNITY IN ACCORDANCE WITH SECTION 1-19-321(E)(7) OR SECTION 1-19-324(E)(1)(k) OF THE ZONING ORDINANCE.

B. Section 1-20-7(E) (EXEMPTIONS) is amended as follows:

(E) Any project which qualifies as "housing for older persons" defined in § 1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter.

(1) **IF THE PROPOSED PROJECT IS A PUD OR MXD THAT IS NOT AN ADAPTIVE REUSE PROJECT, ALL OR A PORTION OF THE PROJECT MUST HAVE BEEN DESIGNATED AS AN AGE-RESTRICTED COMMUNITY AT PHASE I IN ACCORDANCE WITH SECTION 1-19-321(E)(7) OR 1-19-324(E)(1)(k) OF THE ZONING ORDINANCE.**

(2) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for older persons, and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.

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(3) The zoning certificate, site plan and subdivision approvals shall limit usage of the property to ages specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (1) above.

(4) The proposed project shall be located in an area that will be served by both public water and sewer within a designated growth area and shall not be located within an area to be served by well and septic.

(5) The construction and development of the project must include a full program of amenities for older persons. At a minimum the amenities must include:

- (a) A trail system, walking paths, and sidewalks for pedestrian accessibility; and
- (b) A clubhouse/multi-purpose building(s) or equivalent space sized at 20 square feet for every dwelling unit. A minimum of 1,500 sq. ft. must be provided. The maximum square footage required shall be 20,000 square feet; and
- (c) Active recreational open space (for the purpose of providing amenities, including but not limited to, a swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities at a rate of 1/3 acre per 100 dwelling units. A minimum of 1 acre must be provided. A single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement. Only the physical structure (i.e. footprint) of the clubhouse/multi-purpose building(s), not the parking area(s), will be considered in determining the area of active recreational open space, and
- (d) Passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities, and
- (e) An appropriate phasing schedule in each phase of development to meet the needs of the residents.

(6) If, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, or if the Age-Restricted Community (ARC) is an adaptive reuse of existing structure or structures, extraordinary hardship will result from strict compliance with the requirements set forth in subsection (5)(a) through (5)(d) above, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification. However, the Planning Commission may not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

(7) As part of the site plan approval process, the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited to housing for older persons and that appropriate enforcement mechanisms are in place to

enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act.

(8) Prior to recordation of subdivision plats and issuance of the zoning certificate for the project, restrictive covenants must be recorded which comply with the Fair Housing Act, address senior citizen housing and the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any subsequent revisions or modifications of the covenants pertaining to age limits on occupancy shall be submitted to the Planning Commission for approval prior to recordation. Such revisions or modifications will require the re-approval of the site plan, zoning certificate, and subdivision plat(s), as necessary.

(9) Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

(10) Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

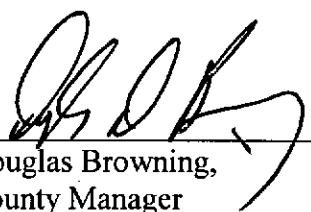
(11) "Appropriate enforcement mechanisms" as used in this section shall include that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than 1 homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall be effective as of the 22nd day of June, 2007. The requirements of this Ordinance shall not apply to any MXD or PUD or portion thereof that was approved for age-restricted housing or "senior housing" at Phase I prior to the effective date hereof.

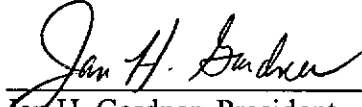
The undersigned hereby certifies that this Ordinance was approved and adopted on the 12th day of June, 2007.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND


Douglas Browning,
County Manager

BY:


Jan H. Gardner, President

(SEAL)

KRM
6/13/07